



ANNO VICESIMO SECUNDO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 51 of 1973

An Act to make provision with respect to liability for the costs of certain litigation, to establish a Fund to meet that liability and for purposes connected therewith

[ASSENTED TO 22ND OCTOBER, 1973]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Appeal Costs Fund Act 1973*.

2. Commencement of Act. This Act shall commence on a date appointed by Proclamation.

3. Arrangement of Act. This Act is divided into Parts as follows:—

PART I—PRELIMINARY, ss. 1-4;

PART II—APPEAL COSTS FUND AND BOARD, ss. 5-9;

PART III—FINANCE, ss. 10-14;

PART IV—INDEMNITY CERTIFICATES, ss. 15-21;

PART V—MISCELLANEOUS PROVISIONS, ss. 22-26.

4. Interpretation. In this Act save where a contrary intention appears—

“appeal” includes an order to review, a case stated for the opinion or determination of a superior court on a question of law, a question of law reserved in the form of a special case for the opinion of a superior court, a motion for a new trial and any other proceeding in the nature of an appeal;

“appellant” includes the next friend of an infant or person under disability or the guardian *ad litem* of any person;

“Board” means the Appeal Costs Board constituted under this Act;

“costs” in relation to an appeal include the costs of an application for an indemnity certificate in respect of an appeal but do not include costs incurred in a court of first instance except where otherwise expressly provided;

“court” includes any board, other body or person from whose decision there is an appeal to a superior court on a question of law or which may state a case for the opinion or determination of a superior court on a question of law or reserve any question of law in the form of a special case for the opinion of a superior court;

“Fund” means the Appeal Costs Fund established under this Act;

“indemnity certificate” means an indemnity certificate granted under this Act;

“Minister” means the Minister for Justice and Attorney-General or other Minister of the Crown who, at the material time, is charged with the administration of this Act: the term includes any Minister of the Crown who is temporarily performing the duties of the Minister;

“proper officer”, used in relation to a court, means—

(a) in the case of the Supreme Court or a District Court, the Registrar;

(b) in the case of a Magistrates Court, the clerk of the court;

“respondent” includes the next friend of an infant or person under disability or the guardian *ad litem* of any person;

“sequence of appeals” means a sequence of appeals in which each appeal that follows next after another appeal in the sequence is an appeal against the decision in that other appeal.

PART II—APPEAL COSTS FUND AND BOARD

5. Appeal Costs Fund. (1) For the purposes of this Act there shall be established and kept in the Treasury an Appeal Costs Fund.

(2) The amounts referred to in section 13 shall constitute the Fund.

(3) The amounts referred to in subsections (7) and (8) of this section, subsections (7) and (9) of section 6, sections 9, 16, 18, 22, 23 and 24 and the costs of administration of this Act shall be paid out of the Fund.

(4) Interest on the moneys in the Fund, calculated on the minimum monthly balance of the Fund at the short term deposit bank interest rate as approved for the time being by the Reserve Bank of Australia, shall from time to time be paid by the Treasurer into the Fund.

(5) Where the Fund is insufficient to meet a payment required by this Act to be made out of the Fund and the Board certifies accordingly, that payment shall be made out of the Consolidated Revenue Fund and a payment so made shall be deemed to be an advance to the Fund and shall remain a charge thereon and shall be recouped out of the Fund immediately sufficient moneys become available therein.

(6) During the months of April and October of each year, the Board shall calculate the amount of the total liability of the Fund on all applications held by it on the thirty-first day of March and the thirtieth day of September respectively last preceding.

(7) Where the moneys in the Fund, excluding the amount calculated under subsection (6), on any occasion exceed \$100,000 the Board shall issue its certificate for payment from the Fund to the Consolidated Revenue Fund of so much of the moneys in the Fund, excluding the amount calculated under subsection (6), as exceed \$100,000 and payment shall be made in accordance with that certificate.

(8) In addition to any amount expressed by this Act to be payable out of the Fund in any case, the Board may allow such amount as it thinks fit to a party to any proceedings for his costs of making application to the Board under this Act and where the Board allows those costs it shall include the amount thereof in any certificate referred to in section 14.

(9) The provisions of the *Audit Act 1874-1968* and *The Treasury Funds Investment Acts 1958 to 1964* relating to Trust and Special Funds shall apply to the Fund.

6. Appeal Costs Board. (1) For the purposes of this Act there shall be constituted a Board to be called the "Appeal Costs Board".

(2) The Board shall consist of three members who shall be appointed by the Minister, namely—

(a) a chairman;

(b) a member representative of and nominated in writing by the Bar Association of Queensland; and

(c) a member representative of and nominated in writing by the Queensland Law Society Incorporated.

(3) If either body entitled under subsection (2) to nominate a person to be a member of the Board fails within 28 days after a request in writing in that behalf by the Minister to submit a nomination, the Minister may without that nomination appoint a person who is in the opinion of the Minister a suitable person, as a member of the Board to represent the interests of the body concerned, and the person so appointed shall be deemed to be duly appointed for all purposes.

(4) The Minister may at any time remove a member of the Board from office and appoint another member in his stead.

(5) Members of the Board shall hold office for such term not exceeding three years as the Minister determines and are eligible for re-appointment.

(6) For the purposes of an inquiry under this Act, the Board shall have and may exercise all the powers, authorities, protection and jurisdiction of a Commission of Inquiry under *The Commissions of Inquiry Acts 1950 to 1954* and the chairman or member presiding at any such inquiry shall have the powers and authorities, protection and jurisdiction of a chairman of a Commission under those Acts save such as are reserved to a chairman who is a Judge of the Supreme Court, and the provisions of those Acts shall apply accordingly and in addition shall apply to any witness or person summoned by or appearing before the Board in any such inquiry.

(7) The expenses of a witness before the Board or a person required to produce documents to the Board shall be paid out of the Fund.

(8) The provisions of the *Public Service Act 1922-1968* shall not apply to the appointment of any member of the Board, and a member thereof shall not in that capacity be subject to that Act.

(9) Every member of the Board shall be paid such fees and allowances as are from time to time prescribed.

7. Meetings of Board. (1) The chairman shall preside at all meetings of the Board at which he is present.

(2) Two members of the Board shall form a quorum but subject to there being a quorum the Board may act notwithstanding any vacancy in its membership.

(3) The decision upon any matter of the majority of members at a meeting shall be the decision of the Board.

(4) If at a meeting of the Board at which two members only are present the members differ in opinion upon any matter, the decision on that matter shall be deferred to a meeting of the Board at which all three members are present.

(5) Subject to this Act, the Board may regulate its own proceedings.

8. Functions of Board. The functions of the Board are—

(a) to exercise and discharge the powers, authorities, duties, functions and obligations conferred or imposed on it by or under this Act;

- (b) to advise the Minister upon any matter submitted by him to it relating to the operation of this Act.

9. Staff. (1) For the effectual administration of this Act, the Governor in Council may by notification published in the Gazette appoint a secretary and such other officers of the Board as he from time to time thinks necessary.

(2) An officer of the Public Service may, in addition to the position he holds therein, be appointed to and hold an office pursuant to this section.

(3) Officers of the Board shall be paid such fees and allowances as are from time to time prescribed.

PART III—FINANCE

10. Additional fees on documents. In addition to any fee payable under any Act or the rules of any court upon a writ, summons, complaint or other document commencing a legal proceeding there shall be paid to the proper officer of the appropriate court—

(a) upon the issue of a writ, summons or other document whereby a cause or matter is commenced in the Supreme Court;

(b) upon the issue of a plaint, summons or other document whereby a proceeding is commenced in a District Court;

(c) upon the issue of a complaint, summons or other document whereby a proceeding is commenced in a Magistrates Court,

the prescribed fee.

11. Cases where additional fee not payable. The provisions of section 10 shall not apply in respect of a writ, plaint, summons, complaint or other document upon the issue of which no fee is payable under any Act or rule of court for the time being in force.

12. Statement to Treasurer. On or before the fourth day of each month in every year, the proper officer of a court shall cause to be prepared and sent to the Treasurer a statement in the prescribed form signed by the proper officer—

(a) setting forth the total amount paid to him during the last preceding month by way of fees pursuant to section 10, as appearing from the records in his custody or under his control; and

(b) containing such other information as is prescribed,

and shall with the statement transmit to the Treasurer the amount referred to in subparagraph (a).

13. Payments by Treasurer to Fund. The Treasurer shall cause to be paid into the Fund all amounts transmitted to him pursuant to section 12.

14. Payments out of Fund. (1) Payments shall not be made out of the Fund except upon and in accordance with a certificate of the Board.

(2) The Board shall not issue a certificate pursuant to subsection (1) unless it is satisfied that the payment is authorized by this Act to be made from the Fund and that the provisions of this Act in relation to a claim for the payment have been complied with.

PART IV—INDEMNITY CERTIFICATES

15. Grant of indemnity certificate. (1) Where an appeal against the decision of a court—

- (a) to the Supreme Court;
 - (b) to the High Court of Australia from a decision of the Supreme Court;
 - (c) to the Queen in Council from a decision of the High Court of Australia given in an appeal from a decision of the Supreme Court;
 - (d) to the Queen in Council from a decision of the Supreme Court,
- on a question of law succeeds, the Supreme Court may, upon application made in that behalf, grant to any respondent to the appeal an indemnity certificate in respect of the appeal.

(2) Where an appeal is determined by the Queen in Council or the High Court of Australia the power conferred upon the Supreme Court by subsection (1) may be exercised by a Judge of the Supreme Court sitting in chambers.

(3) Where an appeal against the decision of a court to a District Court on a question of law succeeds, the District Court may, upon application made in that behalf, grant to any respondent to the appeal an indemnity certificate in respect of the appeal.

16. Effect of indemnity certificate under s. 15. (1) Subject to this Act, where a respondent to an appeal has been granted an indemnity certificate under section 15, the certificate shall entitle the respondent to be paid from the Fund—

- (a) an amount equal to the appellant's costs (if any)—
 - (i) of the appeal in respect of which the certificate was granted;
 - (ii) of a new trial had in consequence of an order made upon an appeal for a new trial; and
 - (iii) where that appeal is an appeal in a sequence of appeals, of any appeal in the sequence that preceded the appeal in respect of which the certificate was granted, ordered to be paid and actually paid by or on behalf of the respondent;
- (b) an amount equal to the respondent's costs—
 - (i) of the appeal in respect of which the certificate was granted;
 - (ii) of a new trial had in consequence of an order made upon an appeal for a new trial; and
 - (iii) where that appeal is an appeal in a sequence of appeals, of any appeal in the sequence that preceded the appeal in respect of which the certificate was granted, as taxed or agreed upon by the Board and the respondent or the respondent's solicitor and not ordered to be paid by any other party; and
- (c) where the costs referred to in subparagraph (b) are taxed at the instance of the respondent, an amount equal to the costs incurred by him or on his behalf in having those costs taxed.

(2) Where an indemnity certificate has been granted under section 15 and the Board is satisfied that the respondent unreasonably refuses or neglects or is unable through lack of means to pay to the appellant the costs referred to in subparagraph (a) of subsection (1) or any part thereof

or that payment of those costs or part would cause the respondent undue hardship, the Board may direct that an amount equal to those costs or to the part thereof not already paid by or on behalf of the respondent be paid from the Fund for and on behalf of the respondent to the appellant, and thereupon the appellant shall be entitled to payment from the Fund in accordance with the direction of the Board and the Fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction.

(3) Notwithstanding subsections (1) and (2)—

- (a) where the respondent is ordered to pay the appellant's costs the aggregate of the amounts payable from the Fund pursuant to subparagraphs (b) and (c) of subsection (1) shall not exceed the amount payable from the Fund pursuant to subparagraph (a) of that subsection; and
- (b) the amount payable from the Fund to any one respondent pursuant to any one indemnity certificate shall not in any case exceed the sum of \$4,000 or such other amount as is prescribed from time to time.

17. Grant of indemnity certificate to successful appellant. Where—

- (a) there is an appeal against the decision of a Magistrates Court to the Supreme Court or a District Court on a question of law;
- (b) the respondent to the appeal did not appear in the proceedings before the Magistrates Court and does not appear on the appeal; and
- (c) the appeal succeeds but the Supreme Court or District Court, as the case may be, refuses to order the respondent to pay the appellant's costs of the appeal,

the Supreme Court or a District Court may upon application made in that behalf, grant to any appellant in the appeal an indemnity certificate in respect of the appeal.

18. Effect of indemnity certificate under s. 17. (1) Subject to this Act, where an appellant in an appeal has been granted an indemnity certificate under section 17, the certificate shall entitle the appellant to be paid from the Fund—

- (a) an amount equal to the appellant's costs of the appeal in respect of which the certificate was granted as taxed or agreed upon by the Board and the appellant or his solicitor; and
- (b) where the costs referred to in subparagraph (a) are taxed, an amount equal to the costs incurred by the appellant in having those costs taxed.

(2) Notwithstanding subsection (1), the amount payable from the Fund to any one appellant pursuant to an indemnity certificate under section 17 shall not in any case exceed the sum of \$200 or such other amount as is prescribed from time to time.

19. Vacation of indemnity certificate. An indemnity certificate granted to a party in respect of an appeal, being an appeal in a sequence of appeals, is vacated if in a later appeal in the sequence the successful party is the one to whom the indemnity certificate is granted.

20. Where indemnity certificate of no force or effect. (1) An indemnity certificate granted to a respondent in respect of an appeal has no force or effect—

- (a) where a time is limited for appealing against the decision in the appeal, during the time limited for appealing against that decision;
- (b) where an appeal lies against the decision in the appeal but no time is limited, until an application for leave to appeal against the decision in the appeal is determined and where leave is granted, the appeal is instituted, or until the respondent lodges with the Board an undertaking in writing by him that he will not seek leave to appeal or appeal against the decision in the appeal, whichever first happens; and
- (c) notwithstanding this subsection where the decision in the appeal is the subject of an appeal, during the pendency of the last-mentioned appeal.

(2) An indemnity certificate granted to an appellant in respect of an appeal has no force or effect—

- (a) where a time is limited for appealing against a decision in the appeal, during the time limited for appealing against that decision;
- (b) where an appeal lies against the decision in the appeal but no time is limited, until an application for leave to appeal against the decision in the appeal is determined, and where leave is granted, the appeal is instituted, or until the expiration of three months from the determination of the appeal, whichever first happens; and
- (c) notwithstanding this subsection where the decision in the appeal is the subject of an appeal, during the pendency of the last-mentioned appeal.

(3) Where the appeal and any later appeal form a sequence of appeals and the indemnity certificate has not been vacated under section 19, a reference in this section to the decision in the appeal shall be construed as including a reference to the decision in any later appeal, and a reference to the pendency of the appeal shall be construed as including a reference to the pendency of any later appeal.

(4) Where an undertaking has been given by a respondent under this section and thereafter he seeks leave to appeal or appeals against the decision to which the undertaking relates, the respondent shall, upon demand made by the Board, pay to the Board any amount paid to him, or on his behalf, under the indemnity certificate and in default of payment the amount concerned may be recovered by the Board from the respondent as a debt by action in a court of competent jurisdiction.

(5) Where any money is paid to an appellant, or on his behalf, by the Board in respect of an appeal and thereafter the appellant is a party in a successful appeal against that decision the appellant shall, upon demand made by the Board, pay to the Board any amount paid to him, or on his behalf, under the indemnity certificate and in default of payment the amount concerned may be recovered by the Board from him as a debt by action in a court of competent jurisdiction.

(6) Any amount paid to or recovered by the Board under subsections (4) and (5) shall be paid into the Fund.

(7) Nothing in this section affects the operation of section 19.

21. Discretion as to indemnity certificate. (1) The grant or refusal of an indemnity certificate lies in the discretion of the Supreme Court or a District Court, as the case may be, and no appeal lies against any such grant or refusal.

(2) An indemnity certificate shall not be granted in respect of any appeal from proceedings begun in a court of first instance before the commencement of this Act.

(3) An indemnity certificate shall not be granted in favour of the Crown.

PART V—MISCELLANEOUS PROVISIONS

22. Abortive proceedings and new trials after proceedings discontinued.

(1) Where after the commencement of this Act—

(a) any civil or criminal proceedings are rendered abortive by the death or illness of the judge, magistrate or justice before whom the proceedings were had or in the case of proceedings had before the Industrial Court on appeal, of any member of that Court or by disagreement on the part of the jury where the proceedings are with a jury;

(b) an appeal on a question of law against the conviction of a person (in this section referred to as the appellant) convicted on indictment is upheld and a new trial is ordered; or

(c) the hearing of any civil or criminal proceeding is discontinued and a new trial ordered by the presiding judge, magistrate or justice for a reason not attributable in any way to the act, neglect or default, in the case of civil proceedings, of any of the parties thereto or their legal representatives, or, in the case of criminal proceedings, of the accused or his legal representatives, and the presiding judge, magistrate or justice grants a certificate (which certificate the presiding judge, magistrate or justice is hereby authorized to grant)—

(i) in the case of civil proceedings, to any party thereto stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to the act, neglect or default of any of the parties to the proceedings or their legal representatives; or

(ii) in the case of criminal proceedings, to the accused stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to the act, neglect or default of the accused or his legal representatives,

any party to the civil proceedings or the accused in the criminal proceedings or the appellant, as the case may be, who pays or is ordered to pay additional costs or on whose behalf additional costs are paid or ordered to be paid by reason of the new trial that is had as a consequence of the proceedings being rendered abortive or as a consequence of an order for or upon a new trial shall be entitled to be paid from the Fund such costs as the Board considers have been reasonably incurred by him or on his behalf in the proceedings before they were rendered abortive or the conviction was quashed or the hearing of the proceedings was discontinued, as the case may be.

(2) No amount shall be paid from the Fund under this section to the Crown.

(3) For the purposes of this section, where in criminal proceedings a presiding judge, magistrate or justice directs that the proceedings being heard be discontinued with a view to other criminal proceedings based on the facts alleged against the accused being instituted, it shall be deemed that a new trial is ordered.

23. Entitlement on order for new trial on certain grounds. (1) Where after the commencement of this Act a new trial is ordered in an action on the ground that the verdict of the jury was against the evidence or the weight of the evidence or that the damages awarded in the action were excessive or inadequate, the respondent to the motion for the new trial shall be entitled to be paid from the Fund—

- (a) an amount equal to the costs (if any) of the appellant in the motion for and upon the new trial ordered to be paid and actually paid by or on behalf of the respondent;
- (b) an amount equal to the respondent's costs of the motion for and upon the new trial, as taxed or agreed upon by the Board and the respondent or the respondent's solicitor and not ordered to be paid by any other party; and
- (c) where the costs referred to in subparagraph (b) are taxed at the instance of the respondent, an amount equal to the costs incurred by him or on his behalf in having those costs taxed.

(2) Notwithstanding subsection (1)—

- (a) where the Board is satisfied that the respondent unreasonably refuses or neglects or is unable through lack of means to pay the whole of the costs referred to in subparagraph (a) of that subsection or any part thereof or that payment of those costs or part would cause the respondent undue hardship, the Board may direct in writing that an amount equal to those costs or the part thereof not already paid by or on behalf of the respondent be paid from the Fund on behalf of the respondent to the appellant, and thereupon the appellant shall be entitled to payment from the Fund in accordance with the direction and the Fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction;
- (b) where the respondent has been ordered to pay the appellant's costs in the motion for and upon the new trial, the aggregate of the amounts payable from the Fund pursuant to subparagraphs (b) and (c) of that subsection shall not exceed the amount payable from the Fund pursuant to subparagraph (a) thereof;
- (c) the amount payable from the Fund to any one respondent in respect of the motion for and upon a new trial shall not in any case exceed \$4,000 or such other amount as is prescribed from time to time.

(3) Where upon any appeal heard after the commencement of this Act a new trial of a cause or matter is ordered upon any ground whatsoever, and upon the new trial the party who was the appellant in the appeal proceedings is ordered to pay the respondent's costs of the new trial, the appellant shall be entitled to be paid from the Fund, subject to the limitations contained in subsection (2), the amounts referred to in subparagraphs (a), (b) and (c) of subsection (1) which shall for the purposes of this subsection be read and construed as if a reference in those subparagraphs to the respondent were a reference to the appellant and a reference to the appellant were a reference to the respondent.

(4) This section does not apply where the respondent to the motion for the new trial is the Crown.

24. Entitlement on refusal of court to sanction compromise. (1) Where a court having jurisdiction in that behalf refuses to sanction the compromise of an action brought by an infant plaintiff and on the trial of the action the amount of the judgment obtained by the plaintiff is an amount that is not greater than the amount that the defendant had agreed to pay under the compromise and the infant plaintiff or his next friend is ordered to pay the whole or part of the defendant's costs of the action on any ground including the payment of money into court by the defendant, the infant plaintiff or his next friend, as the case requires, shall be entitled to be paid from the Fund—

- (a) an amount equal to the costs ordered to be paid by the infant plaintiff to the defendant and actually paid by or on behalf of the infant plaintiff or his next friend;
- (b) an amount equal to the infant plaintiff's costs of the action incurred after the date on which the court refused to sanction the compromise, as taxed or agreed upon by the Board and the infant plaintiff or his next friend or the infant plaintiff's solicitors and not ordered to be paid by any other party; and
- (c) where the costs referred to in subparagraph (b) are taxed at the instance of the infant plaintiff or his next friend an amount equal to the costs incurred by him or on his behalf in having those costs taxed.

(2) Notwithstanding subsection (1)—

- (a) where the Board is satisfied that the infant plaintiff or his next friend unreasonably refuses or neglects or is unable through lack of means to pay the whole of the costs referred to in subparagraph (a) of that subsection or any part thereof or that payment of those costs or part would cause the infant plaintiff or his next friend undue hardship, the Board may direct in writing that an amount equal to those costs or to the part of those costs not already paid by or on behalf of the infant plaintiff or his next friend be paid from the Fund for and on behalf of the infant plaintiff or his next friend to the defendant, and thereupon the defendant shall be entitled to payment from the Fund in accordance with the direction and the Fund shall be discharged from liability to the infant plaintiff or his next friend in respect of those costs to the extent of the amount paid in accordance with the direction;
- (b) the aggregate of the amounts payable from the Fund pursuant to subparagraphs (b) and (c) of that subsection shall not exceed the amount payable from the Fund pursuant to subparagraph (a) thereof;
- (c) the amount payable from the Fund to any one infant plaintiff or his next friend shall not in any case exceed \$4,000 or such other amount as is prescribed from time to time.

25. Payment to solicitor. Any amount payable to a person from the Fund may, if the Board thinks fit, be paid to his solicitor and on payment to his solicitor the Fund shall be discharged from liability to that person in respect of that amount.

26. Regulations. The Governor in Council may make regulations not inconsistent with this Act providing for or with respect to—

- (a) the making of payments out of the Fund and the fixing of maximum payments out of the Fund in a particular case;
- (b) the taxation or assessment of costs for the purposes of this Act in circumstances not provided for under the rules of the appropriate court or where a party to an appeal refuses or neglects to tax his costs;
- (c) officers by whom bills of costs may be taxed for the purposes of this Act in different courts or in different jurisdictions of a court;
- (d) the preparation and service of bills of costs proposed to be taxed for the purposes of this Act;
- (e) the fees and allowances payable under this Act and the purposes for which those fees and allowances are payable;
- (f) the forms to be used for the purposes of this Act and the particular purposes for which those forms shall respectively be used;
- (g) all matters required or permitted by this Act to be prescribed and in respect of which the manner of prescription is not specified;
- (h) records to be kept by the proper officer, for the purposes of this Act and the keeping of those records;
- (i) all matters and things for which it is necessary or convenient to provide for the proper administration of this Act or for achieving the objects and purposes of this Act.